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[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 754, 763; Dec. Dig. § 205.* 2 Va.-W. Va. Enc. Dig. 156.]

Appeal from Circuit Court of City of Norfolk.

Bill by David Stein and others against Arthur J. Morris and others. Decree for defendants, and complainants appeal. Affirmed.

S. M. Brandt, of Norfolk, for appellants.

Hicks, Morris, Garnett & Tunstall, of Norfolk, and *Harlan F. Stone*, of New York City, for appellees.

WALKER v. WALKER:

Jan. 11, 1917.

[91 S. E. 180.]

1. Divorce (§ 133 (1)*)—Desertion—Sufficiency of Evidence.—In a husband's suit for absolute divorce on the ground that his wife willfully abandoned and deserted him without just cause or excuse, evidence held insufficient to entitle plaintiff to the decree for which he prayed.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 446 Dec. Dig. § 133 (1).* 4 Va.-W. Va. Enc. Dig. 738.]

2. Divorce (§ 37 (1)*)—Absolute Divorce—Willfulness of Desertion.—Desertion, to justify a decree for an absolute divorce, must be willful, and a decree for absolute divorce for desertion should not be granted unless the evidence proves willful desertion without justification or excuse.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 107; Dec. Dig. § 37 (1).* 4 Va.-W. Va. Enc. Dig. 738.]

Appeal from Corporation Court of Danville.

Suit for divorce by G. S. Walker against Maggie Walker. From a decree denying plaintiff's prayer for a decree of divorce *vinculo matrimonii*, he appeals. Decree affirmed.

Harry Wooding, Jr., of Danville, for appellant.

CHESAPEAKE & O. RY. CO. v. HUNTER'S ADM'R.

Jan. 11, 1917.

[91 S. E. 181.]

1. Evidence (§ 539½ (1)*)—Experts—Competency.—A stationary engineer who operated locomotives some 25 years previous and tes-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

tified that he was able to tell whether an engine had the steam shut off was not incompetent, as a matter of law, to testify as an expert whether a locomotive observed by him had cut off its steam.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 2350; Dec. Dig. § 539½ (1).* 5 Va.-W. Va. Enc. Dig. 777.]

2. Trial (§ 140 (1)*)—Questions for Jury—Credibility of Expert Witness.—Where no objection was made to a witness' testimony because of his alleged incompetency as an expert, the credibility and weight to be given his testimony was solely for the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. § 334; Dec. Dig. § 140 (1).* 5 Va.-W. Va. Enc. Dig. 788.]

3. Railroads (§ 348 (1)*)—Crossing Accident—Sufficiency of Evidence.—Evidence held to sustain a verdict for plaintiff on theory that defendant railway company did not promptly endeavor to stop one or both engines on its "double-header" train after discovering plaintiff's automobile stalled on its track at a crossing.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1138, 1140, 1141; Dec. Dig. § 348 (1).* 4 Va.-W. Va. Enc. Dig. 129.]

Error to Circuit Court, Rockbridge County.

Action by Hunter's administrator against the Chesapeake & Ohio Railway Company. Judgment for plaintiff, and defendant brings error. Affirmed.

J. M. Perry, of Staunton, for plaintiff in error.

Curry & Curry and *Timberlake & Nelson*, all of Staunton, for defendant in error.

CARY *v.* HOLT'S EX'RS et al.

Jan. 11, 1917.

[91 S. E. 188.]

1. Contracts (§ 164*)—Construction—Reference to Other Contracts.—Where defendant sold a portion of his right under contracts whereby he was to furnish a part of the capital necessary in transaction of the business of a corporation formed to purchase coal lands, for which he was to receive common stock, and the sale contract expressly referred to the prior contracts, it must be construed with such contracts.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 746-748; Dec. Dig. § 164.* 3 Va.-W. Va. Enc. Dig. 401.]

2. Corporations (§ 77*)—Contract of Promoters—Construction.—Where defendant's contract to furnish three-fourths of the capital necessary in the transaction of the business of a corporation for which he was to receive stock provided that all expenses incident to the successful carrying out of the purposes of the corporation were

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